The Solicitors' Journal

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CONTENTS

CURRENT TOPICS

The Birthday Honours

MANY names well known in the law figure in the Honours List issued on the occasion of the King's birthday. Particular pleasure will be felt at the conferment of a barony on Sir WILLIAM FRANCIS KYFFIN TAYLOR, K.C., whose remarkable achievements have been referred to in these columns on more than one recent occasion. Other honours of special interest to lawyers include the knighthoods conferred on His Honour Judge BURGIS, Mr. LAURENCE DUNNE, and Mr. LEO PAGE, and solicitors will note with special gratification that Mr. T. G. LUND, Secretary to The Law Society, is made a C.B.E. A full list of legal honours will appear in our next issue.

The Worshipful Company of Solicitors

THE Report of the Court of Assistants of the Worshipful Company of Solicitors of the City of London for the year 1947–48 shows that there has again been a very satisfactory increase in the membership of the company from 336 to 360, the initial number in 1944 being 235. Amongst matters of interest considered by the court during the year was solicitors' remuneration. Two meetings with the Scale Committee of The Law Society were held, and certain statistics were supplied to the society showing the present trend in the relation of gross profits to net profits in City practices and the increase in overhead expenses. With regard to the Committee on the Constitution of The Law Society, the report states that although the company is not officially represented on this committee no fewer than four out of twelve members of the special committee set up to consider this question are members of the company, viz., Sir DOUGLAS GARRETT, Mr. W. C. NORTON, Mr. ERIC DAVIES and Mr. R. BULLIN. The company made a vigorous but unsuccessful protest against the proposals of the Council of the Stock Exchange abolishing the custom by which solicitors were entitled to share brokers' commission on business introduced by them. A memorandum on the unfair incidence of profits tax as regards property-holding companies was approved by the court, and an amendment to the Finance (No. 2) Bill, 1947, was moved in committee by The Rt. Hon. RALPH ASSHETON, one of the M.P.'s for the City of London, but without success. The pre-war practice of giving lectures under the company's auspices was resumed with a lecture by Mr. DESMOND HEAP (City Solicitor, and a member of the Livery) on the Town Planning Act, 1947, given at Gresham College on 31st January, 1948. Owing to the importance of the subject the lecture was open to non-members, and the college was crowded to capacity.

Acting for Opposing Parties at Different Times

WE commented at the time with some approval on Judge SCOBELL ARMSTRONG'S statement, when sitting as Commissioner in Divorce on 24th December, 1947, that without exception, where a solicitor has acted for one party, he should not later act for an opposing party. The *Law Society's Gazette* for May, in criticising this statement, quotes Tindall, C.J., in *Grissell* v. *Peto* (1832), 2 M. & S. 2, as saying that the court would interfere only in a strong case, because " we should not too narrowly restrain attorneys in the modes by which information essential to their clients' interests is to be obtained." In that case the defendant's solicitor deposed that he had not obtained any further knowledge of the plaintiff's case than would be disclosed by the particulars of demand. What Tindall, C.J., said must, of course, be read against the background of the facts of the case which he was deciding; the principle he laid down might apply equally to a divorce case. But it is clearly undesirable in modern husband and wife litigation for a solicitor to act first for one party and then for the other. The Council of The Law Society rightly point out that, though the law may not be strict, the rule of professional conduct must be that it is not desirable that a solicitor who, while acting in another capacity, has had the opportunity of gaining inside knowledge of his opponent's case, should act against such opponent.

Execution of Trusts (Emergency Provisions) Act, 1939

AN important Order in Council for conveyancers (S.I. 1948 No. 1165) has brought to an end, on 31st May, 1948, the period in which the powers conferred by the Execution of Trusts (Emergency Provisions) Act, 1939, on trustees, personal representatives and statutory owners to delegate their functions, are exercisable. For the purposes of the Act, therefore, the " period of the present emergency " means the period from 1st September, 1939, to 31st May, 1948, inclusive, and it is only service during that period which will constitute " war service " as defined in s. 7 of the Act. It may, however, be noted that persons still on " war service " on 31st May can apparently exercise the powers given by the Act until 30th June, 1948, owing to the provision of s. 1 (1) (*b*) making those powers available during war service and for one month thereafter. But this is not perhaps free from doubt, having regard to the long title of the Act, viz.: " An Act to facilitate the execution of trusts during *the period of the present emergency*" —a period which has now been ended by the Order in Council.

New Conveyancing Points

AMONG a number of practical conveyancing points dealt with in the May issue of the *Law Society's Gazette* is a recommendation that consideration should be given to the inclusion in contracts to buy industrial or agricultural buildings or works of a stipulation that the vendor will supply at the purchaser's expense all the information that may be in his possession and that the purchaser may reasonably require for the purpose of claiming allowances under Pts. I and IV of the Income Tax Act, 1945. Another piece of valuable advice given is that, where any draft contract incorporates by reference the local conditions of sale, vendors' solicitors, unless they are aware that the purchasers' solicitors have access to a copy of the conditions, should enclose a copy with the draft contract.

Planning Orders (Registration)

IN the Commons, on 31st May, Brigadier MEDLICOTT asked the ATTORNEY-GENERAL if he was aware that an order made by a planning authority under s. 26 of the Town and Country Planning Act, 1947, is not registrable as a local land charge until it has been confirmed by the Minister, and whether arrangements can be made to overcome this difficulty by making orders of this character provisionally registrable pending confirmation by the Minister. The Attorney-General replied that s. 26 of the Town and Country Planning Act, 1947, requires the local planning authority to notify the owner and occupier of the land of the fact that an order affecting it has been submitted to the Minister for confirmation. Furthermore, the common form of requisition for search includes a request for information from the local authority as to any notices affecting the land which may have been served. He added that the Lord Chancellor was in communication with The Law Society on the matter to consider whether this difficulty can be overcome. The Attorney-General thought that the difficulty might appear to be more theoretical than practical. We doubt whether conveyancing lawyers will agree with this, or with the implication that there can be any real distinction between the theoretical and the practical in safeguarding clients' titles.

Stamping of Agricultural Tenancy Agreements

THE *Journal* of the Chartered Auctioneers' and Estate Agents' Institute for June, 1948, refers to the question of stamping agricultural tenancy agreements with an *ad valorem* duty on part of the tenant-right valuation payable under an agricultural tenancy agreement. It is stated that after representations to the Inland Revenue authorities it has now been agreed that in cases where no duty is claimed on the amount of the tenant-right valuation the exemption from increased duty on the rent given by s. 54 (2) of the Finance Act, 1947, will apply, provided that the conditions laid down in that subsection are satisfied. These conditions are (*a*) that the term does not exceed thirty-five years or is indefinite, and (*b*) that the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate not exceeding £100 a year. The *Journal* concludes that the position now is that, if the tenancy agreement is executed before the amount of the tenant-right valuation has been ascertained, this will not only prevent stamp duty from becoming payable under the agreement on any part of the tenant-right valuation, but will also entitle the parties in appropriate cases to the exemption from increased stamp duty on the rent given by s. 54 (2) of the Finance Act, 1947.

Private Companies and the 1st July

LESS than three weeks now remain to private companies to put their houses in order if they wish to claim the privileges attaching to the status of an "exempt private company" as defined in the Companies Act, 1947, s. 54 and Sched. III (cl. 129 and Sched. VII of the consolidation Bill). These privileges include exemption from (*a*) the obligation to annex a copy of the balance sheet to the annual return; (*b*) the obligation to print resolutions and agreements for filing; and (*c*) the prohibition of loans to directors, and permit greater freedom in the appointment of the auditor. The requirements laid down in cl. 129 and Sched. VII of the consolidation Bill will have to be satisfied at all times after 1st July next if the company is to be in a position to give the necessary certificate in the next annual return. Failing this, a balance sheet will have to be annexed to the return and thereafter exemption will only be obtainable by application to the Board of Trade. Among the more important factors which will prevent the status of an exempt private company being claimed are: (i) if the policy of the company can be determined by anyone other than the directors, members, debenture-holders or trustees for debenture-holders; (ii) if the number of debenture-holders exceeds fifty; (iii) subject to certain exceptions, if any of the shares or debentures are held by a body corporate, or if any person other than the holder has any interest in any of the shares or debentures.

Registration of New Companies

THE last day for registration of a new company under the Companies Acts, 1929 and 1947, is now rapidly approaching. Unless documents are delivered to the registrar and fees paid not later than the 22nd June next the documents will be returned for amendment to make them conform with the 1948 Act, and a like fate awaits documents presented before that date if for any reason registration is delayed until after 30th June. Particularly where Table A is adopted, therefore, much trouble and expense may be avoided by delivering documents for registration well in advance of 22nd June.

Recent Decisions

In *Eames* v. *Capps*, at Norfolk Assizes on 31st May (*The Times*, 1st June), CROOM-JOHNSON, J., held that where the defendant and his friend stepped into the road from a pavement in the dark and got in the way of a motor-cyclist, with the result that the motor-cyclist's pillion passenger suffered fatal injuries, the defendant was liable to pay damages to the widow of the pillion passenger, and that the defendant, and not the motor-cyclist, was negligent.

In a case in the Court of Appeal, on 4th June (*The Times*, 5th June), the Court (TUCKER, SOMERVELL and COHEN, L.JJ.) held that where a dwelling-house was destroyed by enemy bombing, and later rebuilt, and the tenant both asked for possession when the house was nearing completion and was prevented by the landlord from obtaining possession when it was completed, the tenant was entitled to possession notwithstanding that after his unsuccessful effort to obtain possession he had received a proper notice to quit from the landlord, because he would have been in actual visible possession of the house if it had not been for the act of the landlord in preventing him from taking possession.

In *Clift* v. *Taylor*, on 1st June (*The Times*, 2nd June), the Court of Appeal (SCOTT, BUCKNILL and ASQUITH, L.JJ.) held that an application for a new lease, or alternatively compensation, under the Landlord and Tenant Act, 1927, must be refused where the landlord, a land agent who carried on his profession on the same premises as the tenant, but on another floor, required the tenant's premises to accommodate his staff. The court held (1) that there was no evidence of compliance with the primary condition of the right under s. 4 of the Act to compensation for adherent goodwill; (2) that there was overwhelming evidence that to grant a new lease would be inconsistent with good estate management (s. 5 (3) (*b*) (iv)); and (3) that the referee and the learned county court judge had both failed to realise the difference between global goodwill, which the landlord could have sold in the open market to any purchaser in the same business who wanted the site, and the very limited adherent goodwill which might have been of value to the landlord, and which alone was within s. 4. Both referee and judge, the court held, had also confused profits with goodwill.

RENT-CHARGES AND THE STATUTES OF LIMITATION

RENT-CHARGES in the nature of fee farm rents reserved on the sale of land are more commonly met with in Lancashire and the West of England, but others, such as corn rents created by a local Inclosure Act, are to be found charged on lands throughout the country. Both species are affected by the Limitation Act, 1939 (see the definition in s. 31 (1)). Possession in relation to a rent-charge is, in that Act, equated to the receipt of the rent-charge, but whether a rent-charge has been received in such circumstances as to prevent the statute from running sometimes involves a difficult question of law.

For example, *Woodcock* v. *Titterton* (1864), 12 W.R. 865, may be consulted for the effect of the rule that a rent-charge is entire and issues out of every portion of the land charged. That was an action for trespass for distraining upon the plaintiff's goods. The defendant sought to justify the distress by proving that he was the owner of a rent charged on certain premises including the land on which the plaintiff's house (where the distress took place) was erected. The charged premises consisted of a farmhouse and several fields; the occupier of the farmhouse had, during a period of nearly twenty years, paid the whole rent-charge up to a date about three years before the present proceedings. During those three years, an outlying field belonging to the farm had been sold in lots for building purposes and several houses had been erected on these lots, among which was the plaintiff's house. The piece of land on which the plaintiff's house was built had been in separate ownership for more than twenty years and, during that period, had never been distrained upon for the rent-charge, nor had the owner or occupier ever paid it or acknowledged it to be due. The plaintiff, while admitting that the rent-charge had not been extinguished, argued that the right to distrain for it on his portion of the premises charged was barred by the operation of the Real Property Limitation Act, 1833. The four members of the court were unanimous in rejecting this argument. Crompton, J., in the course of the argument, referred to the general rule that a rent-charge issues out of every portion of the premises charged, and then pointed out that it is, therefore, an error to say that it has not been received or levied out of one portion of the premises, when it has been duly received during the whole period. The law on this point has not been altered by the Limitation Act, 1939. Section 10, which provides that no right of action to recover land (which, by definition, includes a rent-charge) shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (i.e., "adverse possession"), contains a further provision (subs. (3)) that possession of any land subject to a rent-charge by a person (other than the person entitled to the rent-charge) who does not pay the rent shall be deemed to be adverse possession of the rent-charge. "Possession of any land" no doubt means "possession of any part of any land," and this is to be deemed adverse possession if the possessor is not paying the rent-charge. *Woodcock* v. *Titterton*, however, is authority for the proposition that receipt of the whole rent-charge from one part owner is a receipt from every portion of the charged premises. Moreover, in such circumstances, no right of action has accrued to the rent-charge owner and the question of adverse possession is relevant only when a right of action has accrued.

It sometimes happens that a rent-charge is paid, not by one of several part owners as in *Woodcock* v. *Titterton*, but by a person who does not own any part of the charged land. *Adnam* v. *Sandwich* (1877), 2 Q.B.D. 485, is an illustration of such circumstances. In that case, certain lands, subject to a fee farm rent, had in 1812 been sold by C to E and had subsequently become vested in the plaintiff. From 1812 to 1872, C and his successors in title continued regularly to pay the fee farm rent, notwithstanding that they had ceased to own any of the lands out of which the rent issued. During that period, neither the defendant (the rent-charge owner) nor his predecessors in title had any notice that C had parted with his interest by the sale in 1812. In 1872, C's successors realised for the first time that they had been making the payments in error since the date of the sale by C and declined to continue payment. The defendant, therefore, in 1874 applied to the plaintiff (the then landowner) for two years' arrears of rent, but the plaintiff declined to pay and denied liability. Accordingly, a distress was levied, whereupon the plaintiff replevied and brought this action, alleging that, the receipt of the rent having been discontinued for more than twenty years, the defendant's title to the rent was barred under the Real Property Limitation Act, 1833, ss. 2 and 3. Field, J., delivering the judgment of the court in favour of the defendant rent-charge owner, rested it on two distinct grounds. He referred, in the first place, to s. 3 of the 1833 Act (which provides, in effect, that a right to make a distress or bring an action to recover a rent first accrues at the time of the discontinuance of possession or at the last time at which the rent was received), and pointed out that, in order to bring a person rightfully entitled within the operation of s. 2 (which imposed the twenty years' limit) so as to divest him of his rights, there must be a discontinuance of the receipt by him, either by not applying for payment or omitting to enforce his remedies with knowledge that the payment has not been made. In the present case, "the defendant, so far from discontinuing the receipt, had all along since 1812, in the same manner as before, been receiving as and for the rent which the person paying had been paying as and for the rent." The defendant had not omitted to receive the rent, nor had he slept upon any right or to his knowledge left any dormant, for he had no reason to suppose the existence of the transfer by C to the plaintiff's predecessor and no means of knowing of it. In these circumstances, the court held, it would have been an extreme injustice to deprive the defendant of his property without any compensation.

The court then went on to discuss a second ground on which their judgment might be rested and held that, on the facts, it was a fair presumption that the continual payment of the rent between 1812 and 1872 had been made by C under some arrangement for indemnity entered into at the time of the sale to E in 1812, to which the latter was a party and by which his successors were bound.

Adnam v. *Sandwich* has been the subject of some criticism. It has been pointed out, for example, that ignorance does not prevent the operation of the statute (see *Dawkins* v. *Penrhyn* (1877), 6 Ch. D. 318, 324 (C.A.)). This criticism, it is submitted, overlooks the fact that, in the first ground for their decision in *Adnam* v. *Sandwich*, the court did not impute to the rent-charge owner ignorance of the payment of the rent; on the contrary, the court held that he had never discontinued the receipt of it. Moreover, *Adnam* v. *Sandwich* was followed in several Irish cases (see, for example, *Irish Land Commissioners* v. *White* [1896] 2 I.R. 410) and it is still generally regarded as authority for the proposition that, where for a number of years a rent-charge is paid, not by the owner of the land really charged, but by some other person, the rent-charge owner's rights against the land really charged are preserved and are not extinguished by the statute. Consequently, ss. 4 (3) and 5 (1) of the Limitation Act, 1939, must be construed in the light of this decision.

In conclusion, a reference to *Burrell* v. *Egremont* (1843), 7 Beav. 205, may not be out of place, for it sometimes happens that a rent-charge and the land out of which it issues are both vested in the same person. In such circumstances, the hand to pay and the hand to receive being the same, there is, on the authority of *Burrell* v. *Egremont*, a constructive payment of the rent-charge (see also *dicta* of Bankes, L.J., in *Public Trustee* v. *Duchy of Lancaster* [1927] 1 K.B. 516 (C.A.)). Consequently, so long as the rent-charge owner owns also the charged land, no right of action accrues to him under s. 4 (3) of the Limitation Act, 1939. It follows that, if the rent-charge and the land subsequently come into the possession of different grantees, the grantee of the land cannot successfully plead that the statute was running during the period of the grantor's dual capacity.

H. R.

Taxation

TAXATION IN LEGAL PRACTICE—XI

TRUSTS AND SETTLEMENTS

THE charging provisions of the Income Tax Acts make no general distinction among the persons chargeable to the tax based on the nature of the recipient's title to the income. There is machinery for charging trustees acting for persons who are incapacitated or who reside abroad (Income Tax Act, 1918, s. 103, and General Rules 4–14), but no general provision is to be found which would, in the case of a trust the beneficiaries of which are *sui juris* and resident in the United Kingdom, answer the question whether the trustee or the beneficiary is chargeable if the former has the legal and the latter an equitable title to the taxable income. The position is put thus by Viscount Cave, L.C., in *Williams* v. *Singer* [1921] 1 A.C. 65, at p. 73: " The fact is that . . . the person charged is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach . . . In short, the intention of the Acts appears to be that, where a beneficiary is in possession and control of the trust income and is *sui juris*, he is the person to be taxed, and that, while a trustee may in certain cases be charged with the tax, he is in all such cases to be treated as charged on behalf or in respect of his beneficiaries, who will accordingly be entitled to any exemption or abatement which the Acts allow." It follows from this representative aspect of a trustee's liability that where the chargeability to tax depends on some such circumstance as residence or domicil, the circumstances which are material are those relating to the beneficiary and not those of the trustee (see *Kelly* v. *Rogers* [1935] 2 K.B. 446, *per* Lord Hanworth, M.R., quoting with approval from a Scottish case).

The charge to tax at the standard rate, then, may be taken as independent of the nature of the recipient's title. Sur-tax, however, is levied on the total income of an individual, and the House of Lords has decided (*C.I.R.* v. *Longford* [1928] A.C. 252) that trustees cannot be assessed to sur-tax in respect of the income of a *cestui que trust* even where they control the whole source of his income. Viscount Sumner draws a very useful distinction between income tax and sur-tax when he points out that the extent of the liability for the former depends on the various Schedules and Cases under which particular items of income are assessed by local and separate assessments; whereas in the case of sur-tax the taxpayer must return the whole of his income, making such deductions, if any, as the Acts allow, before the return on which the tax is to be computed is complete and ready for the enforcement of the tax. There is no provision (leaving aside the undistributed profits legislation discussed in the previous article) for piecemeal sur-tax assessments.

A particular form of trust which has acquired a special importance in tax law is the settlement. As generally used in taxing statutes, the word settlement has a considerably wider meaning than in the general law (cf. Finance Act, 1938, s. 41 (4), (6), with Settled Land Act, 1925, s. 1 (i)), and includes many transactions in which no succession of beneficiaries is involved, nor any question of a beneficiary under legal disability. Neither is the intervention of a trustee necessary. The funds of such a settlement may be provided by the settlor either in the form of a lump sum of money or a parcel of property; or he may covenant to pay periodical sums to trustees upon the trusts declared by the deed of covenant. Moreover, he may achieve the same practical result by covenanting to pay the periodical sum direct to the beneficiaries or by transferring property to them outright, by forming a company and presenting shares to them, or indeed in many other ways. Now in all cases of periodical payments by a donor, the effect for income tax purposes (apart from the special legislation which will be mentioned later) is the same. The payments, whether made directly or to trustees, are annual payments within Case III and within General Rules 19 and 21, with the following results:—

(*a*) they represent taxable income in the hands of the recipients; and

(*b*) the donor is either entitled or bound on making the payments to deduct tax at the standard rate.

From this position it follows in turn that—

(i) the ultimate beneficiaries can claim any appropriate repayment of the tax so deducted, or, if their incomes render them liable to sur-tax, they must bring the payments into the computation of their total incomes for sur-tax purposes; and

(ii) the donor may claim to deduct the payments in the computation of his total income.

A word in explanation of (ii) will also cover the general question of deductions from total income, an important matter which has not previously been dealt with in this series of articles. The ordinary reliefs and allowances do not, of course, go to reduce sur-tax liability. When super-tax was introduced in 1910, it was founded on a statutory conception, the total income from all sources of an individual as estimated for the purposes of exemptions or abatements under the Income Tax Acts. Among the particulars which a claimant for such exemption or abatement had always been called upon to furnish, there was required a note of " every sum of annual interest or other annual payment " reserved or charged upon his income. From this was deduced, somewhat elliptically perhaps, the proposition that such sums and payments could be taken as diminishing the total income of the payer for the purpose both of exemptions and abatements (allowances and deductions as later statutes call them) and of super-tax. This view was expounded and acted upon by the Court of Appeal in *Earl Howe* v. *C.I.R.* [1919] 2 K.B. 336, and the practice thus blessed survived the change in 1927 to sur-tax. At present the authority for such deduction derives from the headings in the prescribed form of declaration and statement No. XVII in Sched. V to the 1918 Act, or alternatively (see, e.g., *Watkins* v. *C.I.R.* [1939] 2 K.B. 420) from the slightly fuller wording of s. 27 (1) (*b*) of that Act. The important rule for which *Earl Howe's* case is usually cited may be expressed thus: a payment does not qualify under the description " annuity, interest or other annual payment " so as to reduce total income unless it is such that the payer can deduct tax on making it, the payment constituting taxable income in the hands of the recipient. That there are payments which betray certain other characteristics of the epithet " annual " but which are not *per se* the recipient's taxable income is clear from the same case. These are not permissible deductions from total income.

Those annual payments which had this property of counting against total income quickly acquired an attraction for sur-tax payers, many of whom strove to quantify their moral and material liabilities and to put them into the form of covenanted obligations for a limited period, or to settle or transfer property in order to provide for them while not divesting themselves absolutely of the property. The answer of the Legislature is to be found in the Finance Acts of 1922 (s. 20), 1936 (s. 21), 1938 (ss. 38–41) and 1946 (s. 28). Space does not permit of any examination here of the detail of these complicated sections. The method they are driven to adopt may perhaps be described as a reversal of the remedy applied to tax avoidance by means of the non-distribution of the income of companies. There a notional payment of income is presumed: in the case of offending settlements and similar dispositions the effect for tax purposes of a payment of income which has in fact been made is nullified by the statutory device of treating the income for the relevant purposes as the income of the settlor or disponer and of no one else.

The earlier Acts enumerate certain circumstances in which a disposition or settlement as defined is to be rendered ineffective in the manner already indicated, while the Act of 1946 approaches the matter from the opposite direction and seeks to secure that only those settlements which fulfil the conditions it sets out are to be effective as dispositions o

income for sur-tax purposes. It is to be noted that this last provision does not affect the income tax position, almost a novelty so far as settlement avoidance legislation is concerned. Therefore, a transaction which is good under the earlier Acts but is nullified by s. 28 of 1946 will serve as a good link in a claim to repayment of income tax suffered by the actual recipient of the income, but payments made under it will not rank for deduction from the total income of the settlor. Where, however, it is an earlier provision (other than the rarely applicable s. 39 of the 1939 Act) which overrides the transaction, the effect appears to be to nullify the "settlement" for all the purposes of the Income Tax Acts. "Z"

Divorce Law and Practice

INTENTION IN CRUELTY CASES

In the case of *Squire* v. *Squire* (p. 323 of this issue), recently decided by the Court of Appeal, an interesting and illuminating discussion on the question of intention in relation to the matrimonial offence of cruelty took place.

The facts were simple. The husband was an officer in the Indian Army and his wife, in 1938, went to India with him. She, from early life, had suffered from illness and had, in fact, had two serious operations since they had been married. Among other things she suffered from severe insomnia, and as a result of this unhappy affliction she had, between 1940 and 1944, made constant demands on her husband to sit up for long periods of the night reading to her. She insisted on his looking after her and nursing her, and objected to the presence of other people about her in the sick room. The result on the husband of this conduct on his wife's part was that he began to suffer from lack of sleep, and his work and efficiency as an officer were affected. On these facts Finnemore, J., dismissed the husband's petition on the ground of cruelty, his reason being that there was in the wife's conduct no deliberation, malignity or intention, which, in one form or another, he considered to be a necessary ingredient of the offence of cruelty. A majority of the Court of Appeal (Tucker and Evershed, L.JJ.) overruled this decision on appeal, Hodson, J., delivering a dissenting judgment. In his judgment Tucker, L.J., reviewed a weighty quantity of authority and came finally to the conclusion that in this, as in other branches of the law, a person must be presumed to have intended the natural consequences of his action, and hence he was of opinion that, as the natural consequence of such conduct as the wife in this case had meted out to her husband was that the husband would suffer, it therefore followed that she must be taken to have intended to have inflicted such suffering upon him, notwithstanding the fact that there was present in this case none of the deliberation or malignity that are the usual background to cruelty cases. It may at first appear that this produces a somewhat artificial result, for if a person is held to have been intentionally cruel it is difficult to see how this can amount to anything less than malignity or deliberation. But that argument shows very clearly how important it is in questions in which intention is material not to be misled by mere use of words; for malignity and deliberation both must, in whatever sense they are used, involve an element of intention, and must therefore themselves be subject to the artificial interpretation of that word that the law gives to it.

Tucker, L.J., considered the relevant authorities on this question, and it may not be out of place here to notice how the law has developed on this particular point. It was pointed out that in *Russell* v. *Russell* [1897] A.C. 395, which was, perhaps, the case in which the nature of matrimonial cruelty was more extensively considered than any other, no mention at any time was made of there being a mental element to the offence. Motive was not apparently considered as a necessary ingredient. That case was a husband's petition for judicial separation (on the grounds of cruelty)—at that time it was not possible to obtain a divorce on those grounds—and the facts were that the wife brought a false charge of having committed an unnatural offence against her husband, and she published this charge to the world in the Press and persisted in it even after she no longer believed in the truth of the charge. It was found that the husband, though greatly distressed by this behaviour, was not affected, as regards his health, either physically or mentally, nor did he have any reasonable apprehension of his health suffering in this way. It was held, by a majority in the House of Lords, that conduct of this nature was not sufficient to constitute cruelty in the special meaning that that word has when applied to divorce. The real issue in this case was whether the conduct proved was sufficient to constitute cruelty having made it impossible to discharge the duties of married life, or whether something even more than that was required. The latter view prevailed, and it was clearly decided that the oft-quoted definition of cruelty originally put forward by Lord Stowell was to be the one to be adopted, namely, "... the danger to life, limb or health ... or a reasonable apprehension thereof."

It may well be said that this is not conclusive on the point with which we are here concerned, for the point was not in issue in that case, but the fact that, in a case of that nature where the very fundamentals of the nature of cruelty were so exhaustively discussed (the report of *Russell* v. *Russell* covers 74 pages of the law reports), no mention was made of the intention that was required to constitute cruelty is indeed remarkable, more particularly so if it is suggested that there is some special element, e.g., malignity, which is not an ingredient of other offences of which the law has cognisance. The court considered other authorities which all point in the same direction, in particular two *dicta* of Sir William Scott, where he said, first, that it was not necessary to inquire from what motives such treatment as constituted cruelty proceeded; it might be, he said, from turbulent passion or sometimes even from causes not inconsistent with affection (*Holden* v. *Holden* (1810), 1 Hag. Cons. 453). In an earlier case, *Kirkman* v. *Kirkman* (1807), 1 Hag. Cons. 409, he had said words which bore out the view that if safety was endangered by violent and disorderly affections of the mind it was the same in its effects as if it proceeded from malignity alone. Finally, the matter was put in a nutshell by Shearman, J., in *Hadden* v. *Hadden* (1919), *The Times*, 5th December, when he said: "I do not question he had no intention of being cruel but his intentional acts amounted to cruelty."

The case having been decided in this wise, two points remain to be considered. They are: what, if any, effect does (*a*) insanity; (*b*) ill-health of the respondent against whom cruelty is alleged, have in such a case? If the respondent is insane at the time that the acts complained of were committed, then he cannot be guilty of cruelty, the reason for this being twofold. First, as he is insane he cannot have any intention at all, and so he cannot intentionally commit any acts from which the court can presume that he intended the natural consequences of such acts. It would not, of course, be sufficient merely to say that he could have no intention of being cruel. Second, the foundation of the courts' right to grant relief to a person who was treated by his or her spouse with cruelty was in order to protect the injured party and allow that party to withdraw from cohabitation with one who might repeat the offence. The courts considered that the lunacy laws provided sufficient protection to a spouse whose partner was insane, and it was not therefore necessary to grant relief for the personal safety of the petitioner.

The second point mentioned, how ill-health affects the issue, is more difficult to dispose of. Tucker, L.J., in giving his judgment in *Squire* v. *Squire*, was careful to say that though that case could not be decided on the sole ground that the cruelty alleged was due to the illness of the wife and not to any

malignity on her part, nevertheless that did not mean that, in considering whether a case of cruelty had been established, the state of health of the parties was not a relevant matter. At first sight it is not easy to see in what way the health of the respondent is relevant if it is not relevant on the issue of intention. It is respectfully suggested, however, that what the learned lord justice had in mind must have been the question of the effect of the cruel acts on the petitioner. Thus if, for example, the wife on account of her illness had been prone to say or do things to her husband which would in the ordinary way have caused him to suffer mental hurt but which could not cause such hurt to a husband who had realised that his wife was in bad health and did not mean the things she had said and done, then the health of the parties would become a relevant matter and the courts would have to investigate it. But in such a case the relevance of such evidence could surely only go to the credibility of the husband's evidence of the hurt he had suffered, and even then it is difficult to see how it can affect the issue except in cases when the petitioner claims to have suffered mentally and not physically.

It may be worth while to sum up the effects of the law as it now stands :—

(1) In cases of cruelty, as in other branches of the law, a person is presumed to have intended the natural consequences of his intentional acts.

(2) It follows from this that if it is proved that certain intentional acts have been committed which in themselves constitute cruelty, then it is normally immaterial whether the person charged with cruelty intended to be cruel or not. It is not necessary to show that the acts were committed with any evil motive or malignity.

(3) Where the acts are committed by a person who is insane at the time the acts are committed then there is no cruelty, as they are not intentional acts.

(4) The health of the respondent who committed the acts may in certain cases be material, but not on the question of intention.

P. W. M.

A Conveyancer's Diary

COMPENSATION MONEYS UNDER THE COAL ACTS

THE decision in *Re Duke of Leeds* [1947] Ch. 525 was the first on the important and intricate questions which arise in connection with the apportionment of compensation moneys received from the National Coal Commission among beneficiaries entitled thereto under a settlement. I expected that this reported decision would be followed by others, and that something like a code would have gradually been worked out to cover the different circumstances which must exist when wasting assets are compulsorily acquired, and the rights of beneficiaries automatically transferred from the income of property which may, or may not, yield a profit in any given year, to the income of a fund whose yield is more or less stable. In such circumstances a beneficiary may properly object that a method of apportionment which deals very fairly with the rights of persons entitled in succession to property which, in its unconverted state, might have continued to yield income for generations, is not reasonably applicable to the case of a single coal holding which had, at the date of its acquisition, an estimated life of perhaps twenty or thirty years ; and that a simpler system of ascertaining the respective rights in the compensation moneys of tenant for life and remainderman would have emerged parallel to that adopted in *Re Leeds* to meet such a case. The fact that this expectation has not so far been realised indicates that trustees of settlements have apparently been content to accept the calculations suggested by Jenkins, J., as applicable to all cases.

I use the word " suggested " advisedly, for although, of course, that decision was binding on the parties before the court, the learned judge was at pains to point out that it was not the only possible approach to the problem. The fluidity of the situation is the direct consequence of the wording of the relevant portions of the Coal Act, 1938, which provide, in effect (Pt. IV of Sched. III, para. 21), that the compensation moneys in the case of a settlement shall be invested, accumulated and paid in such manner as, in the judgment of the trustees (or of a court competent to decide any question arising out of the settlement), will give to the beneficiaries the like benefit as they might have received from the property had it not been acquired by the Commission, or as near thereto as may be. In the exercise of this wide and difficult discretion the trustees must have regard to all relevant circumstances, including *inter alia* the terms of any coal-mining lease subsisting at the date of acquisition. This is one of the provisions which, while it was taken into account, was not examined in detail in *Re Leeds*, doubtless because circumstances did not warrant such a course ; but I think it is clear that the existence of such a lease, with a term which is long in proportion to the estimated life of the coal holding, and containing perhaps provision for a gradual reduction in the rent or other money payments reserved as the difficulties of winning the coal comprised in the lease increase, may be a most material factor in determining, not only the relative amount of compensation to which the tenant is entitled, as against other persons whose interests may not fall into possession for a considerable time, but also the possibility of some capital payment to the tenant for life in satisfaction of his right to receive payments spread over his lifetime. The possibility of some such payment was not accepted in *Re Leeds*, on the ground that it differed radically from any benefit which the tenant for life could have received under the settlement ; but this is, perhaps, a somewhat narrow approach to the admittedly artificial situation which in any case arises under the Act. In one respect, at least, the Act oversets the rights of successive beneficiaries when it provides that the income of compensation moneys shall be distributed year by year, even in any year when the holding, had it not been converted, would have produced no income for distribution, and the sanctity of a settlement which has already suffered this revolution may, I submit, be pressed too far if capital payments out of compensation moneys are to be regarded as in all circumstances too considerable a departure from the terms of the settlement. This is an important practical issue at the present time, when a small capital payment is often of far greater relative value than a considerable future income.

Another point of some interest in *Re Leeds* is the total absence of any suggestion for dealing with the compensation moneys received in respect of holdings of trifling value. It is a cardinal principle of the method there adopted for calculating the *quantum* of each successive beneficiary's interest in the compensation moneys that each holding should be treated separately for this purpose, as an integral factor in these calculations is the estimated life of the individual holding. Clearly, where several holdings are involved, the whole basis of these calculations would be upset if the compensation moneys paid in respect of all the holdings were to be dealt with as an aggregate fund. But Jenkins, J., stated, in terms, that, as a practical matter, some simpler method would have to be worked out for dealing with two small sums (£263 and £72, respectively) received as compensation for two of the nine holdings involved in that case. The total compensation in *Re Leeds* amounted to nearly £200,000, and in such a case what happens to property forming little more than one per cent. of the whole is of small practical importance. Quite different considerations arise if holdings of relatively small value are the only holdings subject to a settlement. It is true that the calculations adopted in *Re Leeds*, formidable as they appear at first sight, are a question of accounting merely, since the hypothetical figures on which they rest (the estimated life of each holding and its estimated royalty income in any year of such life) have already been worked out

by the Regional Valuation Boards set up under the Act for the purpose of assessing the compensation payable in respect of each holding. Nobody is likely to question these findings or to go to the expense of having them reviewed by an independent assessor. But, even so, the method adopted in *Re Leeds* is inapposite for dealing with a small fund, and perhaps one of the suggestions put forward in argument in *Re Lucas* [1947] Ch. 558, or some arrangement along these lines, will eventually receive the sanction of the court as appropriate to the case of a holding below a certain money value. In *Re Lucas* the aggregate compensation paid exceeded £14,000, an amount which, if invested in the fairly wide range of investments authorised by the Act, would produce an income on which the method of calculation adopted in *Re Leeds* could operate without imposing accounting difficulties greater than any injustice likely to result from some other less strictly equitable scheme. The question is one that is still completely open.

Lastly, a word on the rate of interest to be adopted for the purpose of the calculations necessary if the decision in *Re Leeds* is to be strictly followed. The rate adopted in that case was 3 per cent. This rate was accepted by all parties before the court, and it appeared in evidence that this was, in fact, the rate produced by the investments representing the compensation moneys. Having regard to the fact that the calculations depended in part on the adoption of a given rate of interest once for all, with no possibility of variation if it is in fact exceeded or not reached at a future date, any higher rate in the present circumstances is unlikely to be sanctioned by the court. In *Re Lucas* an attempt to fix the rate at 4 per cent., on the analogy of the rate adopted for applying the rule in *Howe* v. *Dartmouth* (1802), 7 Ves. 137, was rejected. The question may arise, however, whether a rate of even 3 per cent. may not be too high in certain circumstances, and as matters stand at present this question is also open. But while fluctuations in the actual income produced by the compensation moneys will not be reflected in the rate of interest chosen for the purpose of calculating the amounts to be paid over a number of years, this will affect only such payments as are made out of the capital of the compensation moneys in supplementation of the income yielded thereby; the actual income produced by the compensation moneys in any year must be distributed, as has been already shown, whatever the amount of such annual income may be.

"A B C"

Landlord and Tenant Notebook

TENANTS SHARING HOUSE

On numerous occasions since *Neale* v. *Del Soto* [1945] K.B. 144 (C.A.) was decided, the "Notebook" has drawn attention to the possibility of argument about the *ratio decidendi* of that authority (I think the last time was on 26th April, 1947, 91 Sol. J. 215, "Control and Shared Kitchens"). The difficulty may be summarised as follows: the court decided that the premises concerned were not "a part of a house let as a separate dwelling" (Rent, etc., Restrictions (Amendment) Act, 1933, s. 16 (1), definition). This is a short sentence, but it connotes at least two requirements: a letting, and a separate dwelling. It was clear that the view taken by Morton, L.J., was that what the court was dealing with was not a separate dwelling. But at least part of the judgment of MacKinnon, L.J., in *Cole* v. *Harris* [1945] K.B. 475 (C.A.), which followed shortly, reads as if the learned lord justice based his conclusion on an interpretation of the agreement as a licence.

This would not matter in other cases in which the sharing was between grantor and grantee, to use neutral phraseology. At the most, an unsuccessful defendant in possession proceedings would perhaps suffer in dignity if called a lodger.

But many dwelling-houses built for the accommodation of one family have been let in parts by their owners, vital living accommodation being shared by the grantees. It has been known for some time that difference of opinion prevailed on the question whether or not *Neale* v. *Del Soto* would avail the grantor in such circumstances, though I think it may be said that the balance of opinion favoured the proposition that it would.

At least one county court decision to the contrary, however, found its way into reports, and readers may refer to *Mann* v. *Nevill* (1946), 147 E.G. 490, and to the cogent and lucid criticism of the judgment in that case made by the learned editor of the "Conveyancers' Year Book, 1947," at p. 185. True, the learned county court judge did not, in terms, base his decision on the view that two grantees who shared a kitchen could not be lodgers, but I think that this underlay his opinion that it was only when a house was shared with the grantor that *Neale* v. *Del Soto* applied.

Subject to what the House of Lords may say, however, the above decision has now ceased to have even the persuasive authority accorded to county court decisions. For (soon after a Divisional Court had come to the same conclusion when allowing an appeal in criminal proceedings) the Court of Appeal in *Llewellyn* v. *Christmas*, *Same* v. *Hinson* (*The Times*, 4th June, 1948), upholding a judgment of the learned county court judge of Birmingham County Court, who had apparently not been influenced by *Mann* v. *Nevill*, has now held that it is immaterial whether a defendant in possession proceedings shares vital living accommodation with the plaintiff or with someone else.

It appeared that the defendants in the two cases (heard together) had had what were, at least in form, tenancy agreements giving each the exclusive possession of certain rooms, plus the user, jointly with other tenants, of certain other accommodation which included the kitchen. The conclusion reached by the court was that part of a house was duly thereby let to each defendant, in the sense that each by his tenancy agreement was granted exclusive possession of certain rooms. But *Neale* v. *Del Soto*, and, more strongly on this point, *Cole* v. *Harris* (in which the accommodation was shared by the landlord and more than one tenant), were authorities for the proposition that such an arrangement was outside the scope of the Rent, etc., Restrictions Acts. The judgment cites the "true test" given by Morton, L.J., in the second of those cases: there is a letting of part of a house as a separate dwelling . . . if, and only if, the accommodation which is shared with others does not comprise any of the rooms which may be fairly described as "living-rooms" or "dwelling-rooms." Clearly, the emphasis here is on "separate dwelling" rather than on letting. But the newspaper report of *Llewellyn* v. *Christmas* at present available suggests that the defendants must have made as much as they could out of the judgment of MacKinnon, L.J.; for when pointing out that the language of Morton, L.J., drew no distinction at all between the "sharing" of accommodation between the tenant and the landlord, and a similar sharing between the tenant and other tenants, Asquith, L.J., observed that this language was "acquiesced in" by MacKinnon, L.J.

One cannot dispute this acquiescence, but it was decidedly tacit acquiescence, and when one refers to such a passage as "These two contrasted sorts of agreement—(*a*) a demise of part of a house as a separate dwelling, and (*b*) an agreement to share the use of a house, are perfectly intelligible," one is perhaps justified in thinking that MacKinnon, L.J., was contrasting a tenancy with a licence, which opinion is strengthened by a passage a little later on: "The conclusion there [in *Neale* v. *Del Soto*] was that on the facts there was *no demise at all*, but an agreement by the owner of a house *to take in a lodger*, giving him the exclusive use of some of the rooms in the house." While regard must be had to the words of limitation "on the facts there" (*Neale* v. *Del Soto* was,

indeed, an out-of-the-way case: the house was apparently a large one, and what was shared was not only the kitchen, but also the garage, coal-house, conservatory, etc.), it is difficult to reconcile this passage with the view that MacKinnon, L.J., based his judgment on the incompleteness of the accommodation as a home rather than on the absence of an estate in law granted by one party to the other.

Leave was given to appeal to the House of Lords. If the matter is taken further, it will be interesting to learn what that tribunal thinks of *Neale* v. *Del Soto*, a decision which somewhat startled the Ridley Committee (which was approaching the concluding stages of its deliberations on the Rent, etc., Restrictions Acts at the time) and others who had thought that the object of the legislation was to protect tenants who had only a share of a kitchen as much as those who had exclusive rights therein. But it may well be one of those cases which the House, while not agreeing with the decision, would hesitate to overrule in view of the extent to which it has been applied; and if object is relevant, it is a fact that in most of the cases affected, the sharing has been between people who did not get on together as well as had been expected, or by people who did get on but one of whom has died, making it difficult for the landlord to put the vacant part of the house to any use.

R.B.

TO-DAY AND YESTERDAY

LOOKING BACK

GEORGE FITZGERALD—"Fighting Fitzgerald"—of Rockfield, in County Mayo, led a riotous life and met a violent death. He left Eton to join the Army and became notorious for his gallantries, his recklessness and his duels. When he settled on his estate he continued his wild adventures and adopted a practice of hunting at night. He had his serious side too, improving his land, particularly in the production of wheat, while in politics he strongly supported the legislative independence of Ireland. His end came through a quarrel with a neighbour, Patrick M'Donnell, of Chancery Hall. With the help of his followers and associates he pursued him with implacable malice and finally, on a warrant surreptitiously obtained from an incautious justice of the peace, he had him pursued and seized with two of his friends while they were riding to Castlebar. Taken to Rockfield and kept there for the night with great indignities, they were brought out next morning, ostensibly to be conveyed to prison under escort of their captor's servants, but Fitzgerald had arranged for a mock rescue to be staged, under cover of which they were to be shot "while trying to escape," and M'Donnell and one of his friends was duly murdered. The other was not killed. In due course Fitzgerald and six of his accomplices were tried and convicted. On 12th June, 1786, he was condemned to death; the judge's words "drew tears from almost all who heard him.' At six the same evening, with two of his associates he was brought out for execution on the hill near the castle at Castlebar. He had been composed till he saw the multitude outside the prison, when he uttered a wild shriek and continued weeping till he came to the gallows.

MURDER BY THE WEALTHY

IT has been announced that Thomas Ley, the "chalkpit" murderer, a former Minister of Justice in New South Wales, who died in Broadmoor last July, left a fortune of £30,686. Apart from the insane delusions of his unfounded jealousy, which, extraordinary though they were, might belong to any age, the circumstances of the murder revealed at his trial at the Old Bailey in March last year certainly seem to belong to a remoter century. The man of wealth and position hiring little men to assassinate the object of his enmity is not a modern English phenomenon. In the Ireland of "Fighting Fitzgerald" a hundred and fifty years ago it was less surprising, though to less individualistic and more highly organised communities it must, even then, have seemed a primitive way of setting to work. There is about it much more the flavour of the crime of the wicked Lord Stourton executed in 1556 in Salisbury market place with four of his servants for the murder of William Hartgill and his son John, whom after a long persecution he caused to be kidnapped near Kilmington Church, bound, bludgeoned and eventually dispatched by having their throats cut. "Ah, my lord, this is a pitiful sight," said one of the murderers before the bodies were buried in a hidden place, "had I thought what I now think before the thing was done, your whole land should not have won me to consent to such an act."

COUNT KÖNIGSMARK'S VENGEANCE

A LATER case of the same kind was that of Count John Von Königsmark in 1682. He was a Swedish nobleman of Prussian extraction who came to England with a letter of recommendation to Charles II from the King of Sweden. Like many others he had aspired to the hand of Lady Ogle, a great fortune and a great beauty, daughter and sole heiress of the Earl of Northumberland and widow of the Earl of Ogle, but after a few months' courtship the prize was won by Thomas Thynn, of Longleat, in Wiltshire, himself a man of great wealth and prominent in politics in the Whig interest. Königsmark thereupon decided to have him removed. He is described as "a person likely enough to flatter himself without further encouragement than what he received from his own vanity, that if he could only get this legal formality of a husband out of the way, the twice-wedded, twice-widowed maiden might still be his own." Accordingly, he procured three men to murder his rival, Captain Christopher Vratz, an impoverished Pomeranian officer, Lieutenant John Stern, the illegitimate son of a Swedish nobleman, and Charles Borosky, a Pole. He told them that Thynn had set six persons in an ambush to kill him and at his instigation they shot his enemy one evening as he was driving down Pall Mall in a coach. Königsmark and his three hirelings were duly tried at the Old Bailey for murder but he was acquitted, apparently on insufficient evidence that he was privy to the crime. So the undoubted contriver of the assassination got off and only the minor characters paid the penalty.

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OBITUARY

MR. F. C. CANE

Mr. Frank Cuthbert Cane, solicitor, of Messrs. Henry Cane and Son, of Brighton, died recently, aged fifty-six. He was admitted in 1917.

MR. D. J. MASON

Mr. Daniel Johnston Mason, D.S.O., Coroner of West Cumberland, died on 20th May, aged seventy. He was admitted in 1898.

MR. A. S. GUNN

Mr. Alfred Saunders Gunn, solicitor, of Messrs. FitzHugh, Woolley, Baines & Co., of Brighton, died recently, aged seventy-four. He was admitted in 1897.

MR. H. MURPHY

The death has taken place in Dublin of Mr. Henry Murphy, formerly Registrar for County Monaghan. He qualified as a solicitor in 1870, and in 1912 was appointed Crown Solicitor, and then County Registrar. In 1924 he was one of a committee which drafted the Circuit Court Rules.

MR. A. C. SMITH

Mr. Austin Cook Smith, retired solicitor, of Earsham, Norfolk, believed to be the oldest solicitor in the country, died on 24th May, aged one hundred and three. He practised in Bungay, Suffolk, until his retirement in 1909.

NOTES OF CASES

COURT OF APPEAL

TRUST: RENEWAL OF LEASE

***In re* Knowles; Nelson *v.* Knowles**

Lord Greene, M.R., Somervell and Cohen, L.JJ.

21st April, 1948

Appeal from a decision of Roxburgh, J.

By his will and a second codicil the testator, who died in 1906, bequeathed his leasehold farm to his son A, together with live and dead stock " upon trust to carry on the business of a farmer . . . and to cultivate . . . and . . . dispose of live and dead stock . . . and the crops . . . in such manner as he shall think best . . . and to divide the net profits of such business between my said son A and my daughters . . . during their joint lives . . . and upon the death of any of my said daughters to divide such net profits between my said son and the survivor or survivors . . . and upon the death of the survivor . . . I give and bequeath the said leasehold farm for all the residue then unexpired of the said term " to A absolutely. The lease expired in 1923, and A obtained new leases for twenty-one years in 1923 and 1944. The sole surviving sister claimed that the profits arising from the farm under the renewed leases were trust profits, and should be divided accordingly. Roxburgh, J., held that the sister had no interest in the profits after the expiration of the original lease.

LORD GREENE, M.R., said that the ordinary rule, that a trustee cannot be allowed to derive a personal benefit from his position and the opportunities that his position gives him, must apply. The same beneficial trusts as applied to the original lease must also apply to the extension granted to the trustee by virtue of his advantageous position as sitting tenant. There was nothing in the language of the will which could be regarded as the expression of a desire on the part of the testator that the ordinary rule of equity should not apply. The rule was not displaced by the fact that the testator had used correct terms of art when referring to his leasehold interest. The appeal should be allowed.

SOMERVELL, L.J., agreed.

COHEN, L.J., agreeing, said that the doctrine applicable was conveniently stated in *In re Biss* [1903] 2 Ch. 40. The rule appeared to apply wherever a leasehold was bequeathed in trust, and the will was silent as to what was to be done in the event of a renewal.

APPEARANCES: *Jennings*, K.C., and *H. E. Francis* (*Church, Adams, Tatham & Co.*, for *Wallington, Fabian & White*, Watford); *R. L. Edwards* (*Guscotte, Wadham, Thurland & Howard*, for *Vaisey and Turner*, Tring).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

GUARDIANSHIP OF INFANTS: ADOPTION

***In re* Skinner (an infant); Skinner *v.* Carter**

Lord Greene, M.R., Somervell, L.J., and Jenkins, J.

28th April, 1948

Appeal from a decision of Vaisey, J.

The appellant was the mother of a child born in 1937, of which the respondent was not the father. In 1941 she went through a form of marriage with the respondent. In 1942 the parties made an application to the county court, under the Adoption Act, 1926, for an order for the adoption by them jointly of the appellant's child, representing themselves to be man and wife, and an order was made accordingly. They lived together as man and wife until 1947, when the respondent was convicted and sentenced for bigamy in connection with the marriage of 1941. After the expiration of the sentence, the parties did not resume cohabitation, and the appellant applied to the justices for an order made under the Guardianship of Infants Acts, 1886 and 1925. The justices awarded the custody of the infant to the appellant and ordered the respondent to pay her a weekly sum. It was known to the justices that the marriage was bigamous. On appeal, VAISEY, J., discharged the order, holding that on the admitted facts the adoption order was bad and that the justices should have made no order (92 SOL. J. 12). The appellant appealed.

LORD GREENE, M.R., said that s. 1 (3) of the Act of 1926 provided that an adoption order could not be made in favour of more than one person unless they were spouses. The making of an adoption order was serious in its effect on the rights and liabilities of the true and adopting parents, and further effected a fundamental change in the status of the infant. The Act and the Rules of 1926 contained provisions that a guardian *ad litem*

must represent the infant in the making of any application for adoption. It must follow that the infant must similarly be represented in any proceeding brought to impugn or cancel an adoption order, were such a proceeding possible, which did not call for decision. In all the proceedings, the infant had been unrepresented, and the effect of the decision below was to deprive the infant of 10s. per week without a hearing. Assuming that an adoption order could be challenged by appropriate process, it was not competent for a bench of justices to challenge an order made by a county court which had parallel jurisdiction with the high court in this matter. The appeal should be allowed, and the order of the justices restored, with costs in the Court of Appeal and below.

SOMERVELL, L.J., and JENKINS, J., agreed.

APPEARANCES: *Ashkenazi* (*H. W. Pegden*); *Neil McKinnon* (*Nash & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

DIVORCE: DAMAGES AGAINST CO-RESPONDENT REDUCED

Greaves *v.* Greaves and Somerset-Wilson

Tucker and Evershed, L.JJ., and Hodson, J. 30th April, 1948

Appeal from Judge Allsebrook, sitting as a divorce commissioner.

The respondent and his wife were married in 1943. Thereafter they spent very little time together owing to the husband's service abroad. During the husband's absence abroad the co-respondent, whose social station as a naval officer was superior to that of the husband and wife, who were much younger than he, made advances to her. Ultimately, after the husband's demobilisation on return to England, the wife left him and went to live with the co-respondent as his wife. The commissioner pronounced a decree *nisi* and awarded £1,000 damages against the co-respondent, who now appealed on the question of damages.

HODSON, J., asked to give judgment first, said that anyone might feel incensed at the conduct of the co-respondent; but the damages awarded against a co-respondent were, as had repeatedly been laid down, compensatory not punitive. The value of the wife which really mattered was her value to the husband. The commissioner's unfavourable estimate of her character need not necessarily reduce the damages. Nevertheless, it was a material fact that she did not appear from the evidence to have required much seducing, and that there were indications that her moral character was a light one, so that her value to her husband was to that extent lessened. This was not a case which would normally justify an award of heavy damages against the co-respondent. There was no evidence, apart from her own which the commissioner had disbelieved, that the wife had turned away from her husband in any way until she met the co-respondent. There was no foundation for any suggestion that the husband had known what was going on. The co-respondent's conduct was not a thing to be taken into account as making the award of damages punitive. On a consideration of all the facts, the sum awarded by the commissioner was so much in excess of what he (his lordship) would have awarded that the court ought to interfere. £500 would be substituted for the £1,000 awarded.

TUCKER and EVERSHED, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Kershaw* (*Crofton, Craven & Co.*, for *Finch, Johnson & Lynn*, Preston); *Nahum* (*Vizard, Oldham, Crowder and Cash*, for *E. G. Clark & Hallam*, Lancaster).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CRUELTY: INVALID WIFE'S EXCESSIVE DEMANDS

Squire *v.* Squire

Tucker and Evershed, L.JJ., and Hodson, J.
14th May, 1948

Appeal from Finnemore, J. (63 T.L.R. 572).

The respondent wife had from early life suffered from serious illnesses. She had undergone two grave operations since her marriage. She suffered severely from insomnia. Over a period of four years she constantly insisted on her husband's ministering to her and reading to her for long periods during the night. She also behaved violently on occasion. When he tried to sleep she often prevented his doing so. In consequence his health and his efficiency as an officer in the Army became impaired. The husband's petition for divorce on the ground of cruelty was dismissed by Finnemore, J., on the ground that the wife's conduct had in it no element of deliberation or malignity. The husband appealed. (*Cur. adv. vult.*)

TUCKER, L.J., in a written judgment, said that in his opinion the judge had formed an erroneous view of the effect of the authorities. It was indisputable that generally speaking a man was presumed to intend the natural and probable consequences of his acts. He referred to *Russell* v. *Russell* [1897] A.C. 395; *Holden* v. *Holden* (1810), 1 Hag. Cons. 453, at p. 458; and *Kirkman* v. *Kirkman* (1807), 1 Hag. Cons. 409, at p. 410, and said that in *Hadden* v. *Hadden* (*The Times*, 5th December, 1919) Shearman, J., had said: "I do not question he had no intention of being cruel, but his intentional acts amounted to cruelty." *Astle* v. *Astle* [1939] P. 415; 83 SOL. J. 851, was distinguishable and he did not agree with Henn Collins, J.'s use there of the word "malignity," even in its restricted context. The law on that point could not be more clearly expressed than in the brief statement of Shearman, J. Finnemore, J., had not directed his mind to the issue of acquiescence at all, which he (the lord justice) regarded as the material issue in the case. He thought, however, that there was only one conclusion to which the judge could have come, and, therefore, that that court was in a position to grant the relief to which the husband was entitled on his unchallenged evidence, coupled with the undisputed effect on his health of his wife's conduct. The appeal should be allowed, and a decree *nisi* on the ground of the wife's cruelty granted.

EVERSHED, L.J., read a concurring judgment.

HODSON, J., in his dissenting judgment, agreed that it was not necessary to constitute cruelty that there should be malignity. He thought, however, that Finnemore, J., had decided the case also on the alternative ground that cruelty was not established, and he was unable to take the view that Finnemore, J., had reached an erroneous conclusion on the facts. Spouses accepted each other for better or for worse, in sickness and in health. He would dismiss the appeal.

Appeal allowed.

APPEARANCES: *Salmon*, K.C., *Roland Adams* and *H. Cassel* (*Lewis & Lewis and Gisborne & Co.*); *Theodore Turner*, K.C., *Temple* and *Elson Rees* (*Preston, Lane-Claypon & O'Kelly*, for *Fardells*, Ryde).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CHARITY: GIFTS FOR "GOD'S WORK"

***In re* Barker's Will Trusts; Barker *v.* Crouch**

Jenkins, J. 14th April, 1948

Adjourned summons.

The testatrix, who died in 1945, by her will dated 1944 appointed the minister of Zion Baptist Church as one of her executors; the will was in a highly ungrammatical and unintelligible form, and contained a number of references to "God's work," e.g., "the other half to God's work"; "in the best manner that it possibly can it has to be given to God's work chiefly for the executor minister to decide"; "possibly given to some poor country church Baptist or otherwise . . . for God's work"; "an additional sum to be given to Zion Church and God's work." The summons was taken out to decide whether the gifts "for God's work" were charitable.

JENKINS, J., said that the will showed that the testatrix was interested in charities and in the Baptist Church. "God's work" was capable of a very wide meaning, as God had created the universe, but it must be assumed that the testatrix used the phrase in a limited sense. The context of the will showed that the promotion of religion was intended. The expression was verbally different from "the service of God," held a valid charitable gift in *In re Darling* [1896] 1 Ch. 50, but he could not hold that there was any real difference in meaning between the two. He would hold that the gifts "for God's work" were valid charitable gifts for the promotion of religion.

APPEARANCES: *Wilfrid Hunt, C. D. Myles, T. A. C. Burgess* (*Burton, Yeates & Hart*, for *Ellison & Co.*, Cambridge); *Danckwerts* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: REVOCATION OF DEVELOPMENT AGREEMENT

Chessington Development Co., Ltd., and Another *v.* Surbiton Borough Council

Romer, J. 21st April, 1948

Action.

The plaintiffs were owners of lands in the borough of Surbiton, and in 1939 entered into an agreement with the defendant council and other interested parties. The agreement was expressed to be made by virtue of s. 34 of the Town and Country Planning Act, 1932, and to be a schedule to a scheme for the development of the lands in question previously got out by the plaintiffs, approved by the defendants and then awaiting the approval of the Minister of Health. By cl. 3: "the lands . . . may be

used " for certain specified purposes (construction of shops and houses) and in accordance with a certain layout plan. By cl. 4 (*a*) : " Until the scheme shall come into force this agreement shall operate as if the (second plaintiff) and the (first plaintiff) had submitted a . . . plan for the approval of the council and the council . . . had approved the said plan and had granted permission to the (plaintiffs) to develop by virtue of s. 10 of the Act (of 1932) . . ." The scheme never was approved by the appropriate Ministers and the contemplated development was delayed by war conditions. After the passing of the Town and Country Planning (Interim Development) Act, 1943, a general development scheme for the Greater London Area (the " Greater London Plan ") was worked out and sent to local authorities for their guidance. On the instructions of the Minister the defendants in 1946 revoked the permission to develop granted in 1939, and in 1947 refused permission to erect ten houses in accordance with the scheme. The plaintiffs brought an action claiming substantial damages for breaches of contract.

ROMER, J., said that it was the plaintiffs' contention that the defendants, in cl. 3 of the agreement, had precluded themselves from exercising any existing or future statutory powers to restrict the developments otherwise than as provided for in the agreement. Section 34 of the Act of 1932 authorised the defendants to incur such an obligation, and they could not afterwards act in breach of it unless new legislation imposed on them a duty to do so, which had not, in fact, occurred. Such an argument implied that s. 34 was not only restrictive but also permissive in scope, although permits for interim development were dealt with by s. 10. Such a view was supported by *A.-G.* v. *Barnes Corporation* [1939] Ch. 110, and appeared to be well founded. The defendants, in cl. 3, acting within the powers conferred by s. 34 so construed, were covenanting not to exercise their possible future powers under s. 13 to order the pulling down or altering of houses erected under the agreement. Clause 4 had reference to the interim period between the execution of the agreement and the approval by the Minister. Clause 3 was not directed to the immediate future, but to the position which would exist after the interim period when the full scheme came into operation, as it must be construed so as to exclude matter specifically dealt with by cl. 4. The plaintiffs could not succeed unless there could be derived from the agreement as a whole an undertaking that the defendants would not avail themselves of subsequent legislation to cancel interim development sanctioned by cl. 4 under the powers of s. 10 of the Act of 1932. In fact the defendants had acted by virtue of the Act of 1943. The defendants had not contravened the implied negative obligations imposed on them by cl. 3, if only for the reason that the " scheme " of cl. 3 never came into force, while cl. 4 contained no promise, express or implied, not to cancel the permission should circumstances or future legislation require it. The action must be dismissed with costs.

APPEARANCES : *Pascoe Hayward*, K.C., *Harold Williams*, K.C., *Blain* (*Bennett & Bennett*) ; *Capewell*, K.C., *Wilfrid Hunt* (*Town Clerk*, Surbiton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

ANNUITIES GIVEN BY DEED AND WILL: SATISFACTION

In re Van den Bergh's Will Trusts; Van den Bergh v. Simpson

Romer, J. 27th April, 1948

Adjourned summons.

In 1932 the testator covenanted by deed to pay to S, who had been in his employ for thirty years, " or his assigns an annuity of 20s. per week free of income tax, payable quarterly in advance," the provision relating to tax being inoperative as it infringed the appropriate tax legislation. In 1936 the testator made his will in which cl. 9 provided *inter alia* for an annuity of £52 to S, " to be paid free of all deductions including income tax at the current rate for the time being deductible at the source by equal quarterly payments " in arrear ; it was further provided (*d*) that the annuity should not be assignable, and (*f*) that " any annuity which I may hereafter during my lifetime provide . . . " (for S) " shall be applied . . . in substitution for the annuity hereby bequeathed." The testator died in 1937. The summons was taken out to decide whether the annuity bequeathed by the will was intended to be in satisfaction of the testator's liability under the deed.

ROMER, J., said that when questions of satisfaction arose, all the circumstances of the case must be looked at: *Horlock* v. *Wiggins* (1888), 39 Ch. D. 142. Here there were substantial differences between the covenanted and the bequeathed annuities; that under the deed was assignable, whereas that under the will would be forfeited on any attempt to assign ; that under the deed was payable quarterly in advance, while that under the will was so payable in arrear, a matter to which some importance should be attached: *In re Dowse* (1881), 50 L.J. Ch. 285. Conversely, the annuity under the deed was more advantageous than that under the will in that it was effectively free of income tax. The two annuities thus differed in material respects. Finally, sub-cl. (*f*) showed that the testator had directed his mind to the question of satisfaction, and had decided that the doctrine should apply only to annuities granted after the date of the will. This was a material indication of his intention. The doctrine of satisfaction did not apply, and S was entitled to both annuities. Costs of all parties as between solicitor and client would come out of the estate.

APPEARANCES : *R. O. Wilberforce, E. I. Goulding* (*Herbert Oppenheimer, Nathan & Vandyk*) ; *D. S. Chetwood* (*Hargreaves and Crowthers*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

LEASE: BREACH OF COVENANT

Wilson v. Fynn and Others

Denning, J. 26th April, 1948

Action for possession.

The defendant tenants covenanted for themselves, their successors and assigns, not to permit the demised premises to be used otherwise than as offices for the purpose of their business. The tenants were chartered accountants, as also was the plaintiff landlord. He had special reasons for wanting the demised premises to be occupied by chartered accountants. The tenants sub-let the premises, despite the landlord's refusal of consent, to a company whose business was the manufacture of kitchen equipment. The landlord brought this action for possession on the ground of forfeiture for breach of covenant.

DENNING, J., said that the mere fact that the proposed sub-tenants were respectable and substantial did not render the landlord's refusal of consent unreasonable. While it would not have been a breach of covenant for the premises to be used for the business of the tenants, their successors or assigns, if any of those persons had changed the nature of their business, it was a breach of that covenant to sub-let the premises to persons carrying on a different kind of business. The circumstances entitled the landlord to forfeiture of the lease. Judgment for the plaintiff.

APPEARANCES : *Roy Wilson* (*Underwood & Co.*) ; *James Comyn* (*Francis & Calder*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PENSIONS APPEAL TRIBUNALS: DUTIES OF CHAIRMAN

Lee v. Minister of Pensions

Denning, J. 31st May, 1948

Application by a widow for leave to appeal from rejection by a pensions appeal tribunal (*a*) of the claim of her deceased husband for a pension during his lifetime on account of disablement, and (*b*) of her claim in respect of his death.

The facts of the appeal itself do not call for report.

DENNING, J., giving leave to appeal, said that it was not a sufficient compliance with r. 25 of the Pensions Appeal Tribunal Rules, 1946 (which rule regulates appeal procedure), for the tribunal by its secretary to reply to the request for leave to appeal setting out the relevant provisions of the Pensions Appeal Tribunals Act, 1943, and of the Rules of 1946, and telling the applicant to state the point of law in respect of which it was claimed that the decision of the tribunal was erroneous. The request for leave to appeal should be placed before the chairman, who should give such assistance as, in his discretion, he thought fit. If he considered no point of law to be involved, he should say so, adding that, if the claimant were dissatisfied with his view, application for leave to appeal could be made to the High Court. Application granted. Appeals allowed on the merits.

APPEARANCES : The claimant appeared in person ; *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE: APPLICATIONS FOR CERTIORARI

14th May, 1948

The Divisional Court (OLIVER and STREATFEILD, JJ.) affirming a previous ruling by the court, laid down that, when it was proposed to apply *ex parte* for leave to apply for an order of certiorari, the order which it was sought to have quashed must be exhibited to an affidavit which must be filed before the *ex parte* application was made. The statement in "Griffiths' Guide to Crown Practice," pp. 74, 75, that the affidavit might be filed at the time of the *ex parte* application was incorrect.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

NULLITY: WILFUL REFUSAL

Grimes (otherwise Edwards) *v.* Grimes

Finnemore, J. 10th May, 1948

Undefended petition for a decree of nullity.

The wife petitioner gave evidence that her husband had practised *coitus interruptus* against her wishes.

FINNEMORE, J., said that the question whether *coitus interruptus* practised by a husband against his wife's wishes amounted to wilful refusal to consummate the marriage had been left open in *Baxter* v. *Baxter* (1948), 92 SOL. J. 25; 64 T.L.R. 8. In his opinion that practice did not amount to natural or complete intercourse, and was to be distinguished from the use of contraceptives. There would be a decree *nisi* of nullity. Petition granted.

APPEARANCES: *Tolstoy* (*Seton Pollock*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NULLITY: WILFUL REFUSAL

White (otherwise Berry) *v.* White

Willmer, J. 13th May, 1948

Petition for nullity or dissolution of marriage.

Evidence was given by the wife petitioner of cruelty and that her husband practised *coitus interruptus* against her wishes.

WILLMER, J., said that in his opinion *coitus interruptus*, though practised against the wife's wishes, did not amount to wilful refusal to consummate the marriage. He regretted differing from Finnemore, J.'s decision in *Grimes* v. *Grimes*, above. His doing so emphasised the necessity of a decision of the difficult point by a higher tribunal. That practice, persisted in against the wife's wishes, might, however, amount to cruelty. His lordship dismissed the petition for nullity, but granted a decree *nisi* on the ground of cruelty.

APPEARANCES: *Victor Williams* (*Joynson-Hicks & Co.*, for *W. Davies & Son*, Woking); *Marshall-Reynolds, Cridlaw* (*J. Lilly*, Hounslow).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

DARWEN CORPORATION BILL [H.C.] [31st May.

LONDON COUNTY COUNCIL (MONEY) BILL [H.C.] [1st June.

Read Second Time:—

IPSWICH CORPORATION BILL [H.C.] [3rd June.

ST. HELENS CORPORATION (ELECTRICITY AND GENERAL POWERS) BILL [H.C.] [3rd June.

SMETHWICK CORPORATION BILL [H.C.] [3rd June.

Read Third Time:—

AGRICULTURAL WAGES BILL [H.L.] [3rd June.

ANIMALS BILL [H.C.] [3rd June.

COMPANIES BILL [H.L.] [3rd June.

HOUSE OF COMMONS MEMBERS' FUND BILL [H.C.] [3rd June.

INDUSTRIAL ASSURANCE AND FRIENDLY SOCIETIES BILL [H.C.] [3rd June.

SALFORD CORPORATION BILL [H.L.] [1st June.

WEST RIDING COUNTY COUNCIL (GENERAL POWERS) BILL [H.L.] [1st June.

In Committee:—

CRIMINAL JUSTICE BILL [H.C.] [3rd June.

HOUSE OF COMMONS

Read Second Time:—

BEVERLEY CORPORATION BILL [H.L.] [31st May.

BIRMINGHAM CORPORATION BILL [H.L.] [31st May.

COVENTRY CORPORATION BILL [H.L.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (BRADFORD) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (BRISTOL) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (EXETER) BILL. [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (GLOUCESTER) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (HUDDERSFIELD) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (MACCLESFIELD) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (NORTHAMPTON) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (SHREWSBURY) BILL [H.C.] [31st May.

MINISTRY OF HEALTH PROVISIONAL ORDER (STOCKTON-ON-TEES) BILL [H.C.] [31st May.

VETERINARY SURGEONS BILL [H.L.] [4th June.

WARWICK CORPORATION BILL [H.L.] [1st June.

Read Third Time:—

NURSERIES AND CHILD-MINDERS REGULATION BILL [H.C.] [4th June.

RADIOACTIVE SUBSTANCES BILL [H.L.] [4th June.

In Committee:—

FINANCE (No. 2) BILL [H.C.] [3rd June.

QUESTIONS TO MINISTERS

LEGAL AID (INCOME LIMIT)

Mr. HECTOR HUGHES asked the Attorney-General, in view of the fact that legal aid is denied to many deserving persons because their incomes are above the prescribed limit and having regard to the change in the value of money, if he is yet in a position to take steps to raise the prescribed limit and also to implement the other recommendations of the Rushcliffe Report.

The SOLICITOR-GENERAL: I would refer my hon. and learned friend to the reply given by my right hon. and learned friend the Attorney-General to my hon. friend the Member for Wimbledon (Mr. Palmer) on 26th January this year [see 92 SOL. J. 76].

Mr. HUGHES: While thanking my hon. and learned friend for that reply, and agreeing that the major recommendations will require a major Bill, may I ask him whether he does not agree that this particular change could be effected by a very simple Bill which would obviate a continuing injustice to a very large class of people?

The SOLICITOR-GENERAL: The question of some interim measure, probably by way of regulation, was taken into consideration, but it was found that there would be great practical difficulties in the way of implementing it. [31st May.

TOWN AND COUNTRY PLANNING—DEVELOPMENT CHARGE

Mr. PATON asked the Minister of Town and Country Planning if he is aware that many people have had plans for dwelling-houses approved by local authorities since 1st January last but, because licences to build cannot be granted before 1st July next, they may become liable for development charge through circumstances outside their control; and if, in *bona fide* cases of this kind, he will defer the date for levying the development charge or make some other equitable arrangement.

Mr. SILKIN: I am aware of the position. There is no power under the 1947 Act to provide that the owner of a building commenced after 1st July, 1948, shall not be liable to development charge. The Central Land Board, however, have power to accept payment in instalments, and are required to take into consideration any representations made by the applicant as to the method of payment. The applicant will also be entitled to claim under Pt. VI of the Act. [1st June.

REQUISITIONING

Lieut.-Colonel LIPTON asked the Minister of Health whether he will delegate powers to local authorities to requisition the unoccupied portions of residential property offered for sale with part-vacant possession.

Mr. BEVAN: I am prepared to consider applications from clerks to local authorities for powers to requisition in such cases. [3rd June.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1139. **Direction Given by the Treasury** under Regulation 2A of the Defence (Finance) Regulations, 1939. May 29.

No. 1165. **Execution of Trusts** (Emergency Provisions) Act (End of Emergency) Order, 1948. June 2.

No. 1082. **Mental Treatment** (Adaptation of Forms) Rules, 1948. May 24.

No. 1125. **Motor-Fuel** (Control) Order, 1948. May 27.

No. 1127. **Motor Spirit** Regulations, 1948. May 28.

No. 1144. **National Insurance** (Determination of Claims and Questions) Regulations, 1948. May 28.

No. 1126. **Town and Country Planning** (Enforcement of Restriction of Ribbon Development Acts) Additional Regulations, 1948. May 27.

No. 1030. Town and Country Planning (General Development) (Scotland) Order, 1948. Corrigendum slip.

No. 1140. **Transfer of Powers** (London) (Sayes Court, Greenwich) Order, 1948. May 27.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved that the honour of knighthood be conferred on Mr. Justice BENJAMIN ORMEROD on his appointment as a Judge of the High Court of Justice.

The King has appointed Sir FREDERICK WILLIAM GENTLE, K.C., to be a Commissioner on the Northern Circuit.

The Chancellor of the Duchy of Lancaster has appointed Mr. ALLAN WALMSLEY, K.C., to be Judge of County Courts on Circuit No. 5 (Salford, Bolton, etc.).

The Attorney-General has appointed Mr. MAURICE REED, M.B.E., as Legal Secretary and Head of the Law Officers' Department in place of Mr. R. A. Swan, C.B.E.

The National Coal Board announce the appointment of Mr. R. S. S. ALLEN, at present Principal Assistant Legal Adviser, to be Legal Adviser and Solicitor to the Board. He fills the place vacated by Sir Geoffrey Vickers, V.C., who was appointed a member of the Board on 13th May.

Mr. ALBERT ASHWORTH, Assistant Solicitor to Batley Corporation since February, 1947, has been appointed Deputy Town Clerk of Macclesfield, and will begin his new duties on 14th June.

Mr. JOHN T. CHENERY, Solicitor and Deputy Clerk, Shoreham-by-Sea Urban District Council, has been appointed Town Clerk of the Borough of Louth, Lincolnshire.

The Home Secretary has approved the appointment of Mr. M. A. J. MIDDLETON as Clerk to the Justices for the Blofield and Walsham Petty Sessional Division. Mr. Middleton was admitted in 1941.

Colonel G. E. WILKINSON, M.A., M.C., D.L., senior partner in the firm of Wilkinson & Marshall, Newcastle-upon-Tyne, has had the Honorary Degree of Master of Laws conferred upon him by the University of Durham.

Notes

PRACTICE DIRECTION BY ROMER, J.

APPEALS UNDER THE GUARDIANSHIP OF INFANTS ACTS, 1886–1925

The following Practice Direction has been approved by the judges of the Chancery Division :—

Within ten days of the service of the notice of appeal the solicitors on each side are to notify the Cause Clerk whether or no they desire to adduce further evidence on the hearing of the appeal. If either party does so desire, an appointment will be given for the solicitors (not counsel) to attend the judge to obtain his directions on the matter. On this appointment the solicitors must be prepared to indicate in outline what further evidence it is desired to adduce, whether it is to be oral or by affidavit, and why it was not given before the justices.

A date for the hearing of the appeal will normally be fixed when the solicitors are before the judge.

It is the duty of the appellants' solicitors to notify the respondents' solicitors (or the respondent, if in person) of this direction when serving the notice of appeal.

If neither party desires to adduce further evidence, the date fixed for the hearing of the appeal will be notified to the solicitors for the parties on application to the judge's clerk.

INTERNATIONAL BAR ASSOCIATION

SECOND INTERNATIONAL CONFERENCE OF THE LEGAL PROFESSION

The Second International Conference of the legal profession, organised by the International Bar Association, is to be held at The Hague from the 16th to the 21st August, 1948.

Membership of the International Bar Association is confined to national organisations of members of the legal profession. The General Council of the Bar and The Law Society are among the thirty-two national organisations from twenty-eight countries who are members of the Association. Barristers and members of The Law Society are accordingly entitled to attend the Conference as observers.

Apart from the discussion of papers written by experts on various legal subjects of international interest the programme of the conference includes social activities and one day is wholly reserved for excursions.

It is regretted that apart from the official representatives of the General Council of the Bar and The Law Society, the Bank of England is not prepared to authorise the provision of any Dutch currency for those attending the meeting, beyond the basic travelling allowance of £35.

Further details may be obtained from the Secretary of the General Council of the Bar at 5 Stone Buildings, Lincoln's Inn W.C.2, or from the Secretary of The Law Society, The Law Society's Hall, Chancery Lane, W.C.2.

INNER TEMPLE

The treasurer (His Honour E. M. Konstam) and Masters of the Bench of the Inner Temple entertained the following guests at dinner on 2nd June, the Grand Day of Trinity Term: The Archbishop of New Zealand, Viscount Swinton, Lord MacDermott, Sir Alan Lascelles, Major Sir Ralph Glyn, General Sir William Platt, the treasurer of Gray's Inn, Professor T. B. Johnston, Lieutenant-Colonel E. J. S. Ward, the Master of the Temple, Alderman Denys Lowson, the Rev A. J. Macdonald, Mr. C. L. Chute, the Reader of the Temple, and the sub-treasurer.

UNITED LAW CLERKS' SOCIETY

The Annual Meeting of the United Law Clerks' Society was held on Thursday, 27th May, 1948, in the Council Room of The Law Society's Hall, London, W.C. The Chair was occupied by Mr. Edward Jagôt, Chairman of the Committee of Management, and 40 members were present. In submitting the report and accounts for 1947, the Chairman called attention to the fact that the Society was no longer an approved society for health insurance purposes, this section of the Society's work having been transferred to the Ministry of National Insurance on 16th February last. He referred to the proposals for reorganisation and development and said that he hoped the committee would have something concrete to submit next time a meeting was held. He moved the adoption of the report and accounts. This motion was seconded by Mr. H. J. J. Smerdon, Treasurer, who made mention of the fact that Messrs. Peat, Marwick, Mitchell & Co. were now the Society's auditors, and that the 1947 accounts were presented on an income and expenditure basis, with a balance sheet, instead of upon a simple cash basis, which all would agree was more satisfactory. The income of the Society was £14,460, whilst the payments in respect of benefits were £11,425. After questions by members had been dealt with, the Chairman's motion was adopted. Amendments of rules were considered and passed, and the Committee and officers were elected for the ensuing year. The Society's address is Maxwell House, Arundel Street, London, W.C.2. Tel. TEMple Bar 8879.

Wills and Bequests

Mr. J. E. T. Ducker, solicitor, of Derby, left £79,050, with net personalty £78,468.

Mr. A. H. Naylor, solicitor, of Moorgate, E.C.2, left £29,469.

Mr. C. L. Poyser, Solicitor to the Central Electricity Board, left £4,599, with net personalty £4,351.

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE

CHANCERY DIVISION

		ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A			
		EMERGENCY ROTA	APPEAL COURT I	Mr. Justice VAISEY	Mr. Justice ROXBURGH
Date				*Witness*	*Non-Witness*
Mon.,	June 14	Mr. Reader	Mr. Andrews	Mr. Andrews	Mr. Blaker
Tues.,	,, 15	Hay	Jones	Jones	Andrews
Wed.,	,, 16	Farr	Reader	Reader	Jones
Thurs.,	,, 17	Blaker	Hay	Hay	Reader
Fri.,	,, 18	Andrews	Farr	Farr	Hay
Sat.,	,, 19	Jones	Blaker	Blaker	Farr

		GROUP A		GROUP B	
		Mr. Justice WYNN PARRY	Mr. Justice ROMER	Mr. Justice JENKINS	Mr. Justice HARMAN
Date		*Business as listed*	*Business as listed*	*Witness*	*Non-Witness*
Mon.,	June 14	Mr. Jones	Mr. Farr	Mr. Reader	Mr. Hay
Tues.,	,, 15	Reader	Blaker	Hay	Farr
Wed.,	,, 16	Hay	Andrews	Farr	Blaker
Thurs.,	,, 17	Farr	Jones	Blaker	Andrews
Fri.,	,, 18	Blaker	Reader	Andrews	Jones
Sat.,	,, 19	Andrews	Hay	Jones	Reader

"THE SOLICITORS' JOURNAL"

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

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